

Waivers	First Name	Last Name	Claim Number
			W-19-0006
Amount	OGC Received Date	Assigned To	Assigned Date
\$611.66	05/11/2019	redden, kenneth	05/16/2019
EPA Decision	EPA Decision Date	Amount Approved	Status
DENIED	12/16/2019	CLOSED	
Appeal	Comments		
No			
Type			
Federal Employee Retirement System (FERS)			

Attachments

From: Redden, Kenneth
Sent: Monday, December 16, 2019 12:34 PM
To: [REDACTED]
Cc: Sisson, Ann <Sisson.Ann@epa.gov>; Stewart, Leonice <Stewart.Leonice@epa.gov>; Church, Stacey <Church.Stacey@epa.gov>; Lavergne, Dany <lavergne.dany@epa.gov>; Tammy Johnson <tammy_johnson@ibc.doi.gov>
Subject: Waiver of Indebtedness Application (Debt ID# M1822600002)

[REDACTED],
This email is in response to your Waiver/Remission of Indebtedness Application received by this office on May 11, 2019 wherein you have requested approval of a waiver of debt ID# M1822600002 in the amount of \$611.66. For the reasons set forth below, your request for a waiver is denied.

Background

On May 31, 2017, you were officially selected for an appointment with the EPA as a Policy Assistant with the Office of the Administrator, Office of Policy, in Washington, D.C. effective June 11, 2017. In your appointment letter, you were informed that your benefits included, among other things, retirement under the Federal Employees Retirement System (FERS-FRAE) based on years of service. This was the same retirement system that you had from 07/28/14 to 06/11/17 while with your former employer, the United States Senate, as evidenced by a letter dated June 16, 2017.

Your Standard Form 52, Request for Personnel Action, with an effective date of 06/11/17 mistakenly designated you under the "KR" retirement plan which stands for the FERS/RAE retirement system. Several of your Standard Form 50s, Notification of Personnel Action, (approval dates of 06/22/17, 06/30/17, 09/11/17, 01/07/18, and 06/10/18) contained the same mistake. This "KR" retirement plan miscoding was corrected on 07/02/18, as evidenced by an SF 50 approved on that date and a subsequent SF, including

one approved on 07/05/18. These July 2018 SFs contain the code “KF” for the FERS-FRAE retirement plan.

Upon starting your employment at EPA, some of your first Earnings and Leave Statements for Pay Periods 14 & 15 of 2017 indicate your retirement plan as FERS/RAE with a corresponding 3.1% deduction from your paycheck. After the correction of your retirement plan to FERS-FRAE in July 2018, your Earnings and Leave Statements for Pay Periods 15 & 16 of 2018 indicate your retirement plan as FERS-FRAE with a corresponding 4.4% deduction from your paycheck.

Accordingly, because of the difference in the percentage in retirement payroll deduction, EPA sent you a Bill of Collection on M1822600002 in the amount of \$611.66. In response to the Bill of Collection, you timely submitted a Waiver/Remission of Indebtedness Application.

Analysis

Under 5 U.S.C. §5584, I have the authority to waive collection of erroneous payments or allowances, if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he or she was being overpaid. B-271308, April 18, 1996.

In the present case, I find that the erroneous deductions were caused by Agency administrative error. Therefore, the only issue before me is whether you knew or should have known that you were placed in the wrong retirement plan. I note that you state in your Waiver/Remission of Indebtedness Application that you first became aware of debt on August 14, 2018, presumably after EPA’s Human Resources Office notified you of the error after that office completed a review of all political new hires on June 22, 2018. However, my review of the documents in the record lead me to conclude that you should have known that you were placed in the wrong retirement plan much earlier.

As the record indicates, there are several documents that put you on notice that you were under the wrong retirement plan from the very beginning of your appointment with EPA. Your May 31, 2017 appointment letter notified you that your retirement plan (FERS-FRAE) should remain the same at EPA as it was with your former employer, the United States Senate. However, several of your Standard Form 50s approved and Earnings and Leave Statements issued at the beginning of your appointment with EPA clearly indicated the incorrect retirement plan (FERS/RAE).

Generally, “if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, then the employee is not without fault and waiver will be denied.” B-231018 (August 2, 1989). In other words, an employee who knows or reasonably should have known that he or she was overpaid should be prepared to repay the debt and

it is not against equity and good conscience to collect. B-227322 (September 19, 1988).

Based on the discussion above, I find that it is not against equity and good conscience to collect the \$611.66 that your Bill for Collection states that you owe. Accordingly, your waiver request is denied.

I trust this email is responsive to your claim, and I am sorry a more favorable reply cannot be made. Under 40 C.F.R. part 13.11(e)(iii), I have the delegated authority to waive all or part of the interest, penalty, and administrative charges which have accrued on this debt. In this regard, I am directing that EPA waive any portion that may have accrued that is attributable to interest, penalty, and administrative charges.

By copy of this email to Leonice Stewart in EPA's Washington Finance Center, I am advising that collection of this debt should proceed consistent with this email. You have the right to request reconsideration of the denial of the claim. In a request for reconsideration, you must present new factual information that might cause the Claims Officer to overturn the prior decision.

Please be advised that a waiver is one of several options for debtors. EPA will notify you of the opportunity to request a compromise, suspension, or termination of your debt based on factors that include inability to pay.